IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 3622 OF 2005
IN
CRIMINAL APPLICATION NO. 5160 OF 2003

Rajiv Gulab Chandalia ...Applicant

V/s.

The State of Maharashtra & Anr ...Respondents

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Mrs. S.D.Khot, Advocate the applicant.
Mr. Rajendra More, A.P.P. for State.
Mr. A.P. Mundargi, Senior counsel with Mr. Birender Saraf with Mr. Ashish Kamath, for the Respondent No.2.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATE OF RESERVING THE ORDER : 21.11.2005

DATE OF PRONOUNCING THE ORDER : 25.11.2005

P.C.:-

1. Heard Mrs. Khot, the learned advocate for the applicant and Mr. Mundargi, the learned senior counsel for respondent No.2.

2. By order dated 25.3.2004, Criminal Application No.5160 of 2003 was disposed of in view of the fact that the matter was amicably settled between the parties and in terms of the consent minutes of order dated 25.3.2004 which came to be tendered by the parties.

3. The applicant is seeking clarification/ modification of para 1 of the said consent minutes of order. The said para 1 reads as under:-

> "The Petitioner to pay the Respondent No.2 a sum of Rs.10/- lakhs as compensation/ permanent maintenance and alimony in view of their matrimonial relationship. The petitioner to pay to his son Jahan and daughter Khushi sums of Rs.7,50,000/- each as and by way of permanent maintenance and for the well being of the children."

3. The learned advocate for the applicant i.e. husband of respondent No.2 and the father of the two children, has stated that the applicant came to know that the amount of Rs.7,50,000/- given to each of the children was being used by the respondent No.2 for the purpose of purchasing a flat. It is further submitted that in view of para 1, the money cannot be used for purchasing a flat. It is the case of the applicant that the said amount should be kept in fixed deposit in the names of two children and should

not be used for purchasing the flat.

4. Mr. Mundargi, on the other hand has pointed out the last part of para 2 of the consent minutes of the order dated 25.3.2004, which reads as under:-

> "On the divorce decree being drawn the Respondent No.2 shall be at liberty to withdraw the same."

. Mr. Mundargi, has submitted that in view of this, it is clear that the wife i.e. the respondent No.2 would be at liberty to withdraw the said amount. He has further submitted that it is categorically stated in the consent minutes of the order that the respondent-wife would be at liberty to withdraw the said amount. It is further submitted that the wife and children have no place to stay and at present they are residing with some relatives, hence, it is absolutely necessary that a flat is required to be purchased. It is further submitted that the flat would be purchased in the joint names of wife as well as both the children and as such the interest of the children would be protected. It is not disputed that the wife is earning an amount about Rs.15,000/- per month and the wife would maintain the children out of

the said amount.

5. Looking to the fact that it has been specifically stated in the minutes of the order that on the divorce decree being drawn, the respondent-wife would be at liberty to withdraw the amount, I am of the opinion that, now the applicant cannot insist that the wife cannot withdraw the said amount and she should invest the amount of Rs.7,50,000/- in the name of each of two children.

6. In view of the above facts and circumstances, application is rejected.

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